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as a tort notwithstanding the license or special ordinance of the municipal corporation. *Costello* v. *State, supra*: When the rights of the people are effected, as in this case, any citizen may institute proceedings to bring such a state of affairs to an end. He need show no special damage to himself. *People* v. *Harris, supra.*

OFFER AND ACCEPTANCE—MISTAKE OF FACT—KNOWLEDGE OF THE OTHER PARTY.—The defendants quoted to the plaintiffs a chemical known as "C. P. white," at $10.50 per pound, and accepted the order of the plaintiffs for a certain quantity. There were two forms of this chemical on the market, calcine and crystalline, selling at about $10 and $30, respectively. But by trade usage, "C. P. white" commonly referred to the latter. The defendants tendered the inferior grade, whereupon the plaintiffs sued for breach of contract. The majority of the court *held* (two judges dissenting) for the plaintiffs, attributing bad faith to the defendants; but concluded that, even had the defendants made an honest mistake, they would be bound. The minority declared that the plaintiffs, knowing the true market price of "C. P. white" to be $30, must have been aware of the honest mistake of the defendants, so that no contract came into being. *Independent Trading Co., Inc.* v. *E. Fougera & Co., Inc.* (1st Dept. 1920) 192 App. Div. 686, 183 N. Y. Supp. 431.

Where there is a mutual mistake as to the identity of the specific subject-matter of an intended contract, there is said to be no binding agreement. *Harvey* v. *Harris* (1873) 112 Mass. 32. But a mistaken supposition as to a collateral attribute of the subject-matter, by one or both parties, will not prevent the inception of a contract. *Wheat* v. *Cross* (1869) 31 Md. 99; *Hecht* v. *Batcheller* (1888) 147 Mass. 335, 17 N. E. 651; *Vallentyne* v. *Immigration Land Co.* (1905) 95 Minn. 195, 103 N. W. 1028; *Cavanagh v. Tyson, Weare & Marshall Co.* (1917) 227 Mass. 437, 116 N. E. 818; but *cf. Roberts* v. *Fisher* (1870) 43 N. Y. 159. However, where the mistake is as to an attribute sufficiently vital to the bargain, the same legal consequences follow as if the mistake were as to the identity. *Sherwood* v. *Walker* (1887) 66 Mich. 568, 33 N. W. 919. Where there is unilateral mistake as to price, due to erroneous computation, or expression, which is held to be known to the other party, no contract results. *Harran* v. *Foley* (1885) 62 Wis. 584, 22 N. W. 837; *Everson & Co.* v. *Int. Granite Co.* (1893) 65 Vt. 658, 27 Atl. 320; *Cunningham Mfg. Co.* v. *Rotograph Co.* (1908) 30 D. C. App. Cas. 524; *Germain, etc. Co.* v. *Western Union, etc. Co.* (1902) 137 Cal. 598, 70 Pac. 658; *City of New York* v. *Dowd Lumber Co.* (1910) 140 App. Div. 358, 125 N. Y. Supp. 394. But where the error in price results from mistaken business judgment, the mistaken party is bound, though the other party knew of the error in judgment. See *Everson & Co.* v. *Int. Granite Co., supra.* In the instant case, however, the mistake of the defendants, if any, was as to the identity of the subject-matter described as "C. P. white." There was no arithmetical miscalculation, but the apparent miscalculation was plainly such as to make the buyer aware of the seller's misunderstanding of what was called for in the offer. See *Smith* v. *Hughes* (1871) L. R. 6 Q. B. 597.

SALES—CONDITIONAL SALE—INTERPRETATION OF "INSECURITY CLAUSES."—The defendant sold a truck to the plaintiff on the installment plan, with the usual provision that if the defendant should "at any time deem itself insecure," it should have the right to retake the property, retaining paid-up installments as liquidated damages. Before any default in the payments had been made by the plaintiff, the defendant retook the truck, without reasonable cause to deem itself insecure. *Held,* for the plaintiff. *Hines* v. *Pacific Car Co.* (Wash. 1920) 188 Pac. 29.

In construing clauses similar to the one in the instant case, three views have been taken. (1) That there must be reasonable cause. *Skookum Lumber Co.* v. *Sacajawea Shingle Co.* (1919) 107 Wash. 356, 181 Pac. 914; *Newlean* v. *Olson*

(1888) 22 Neb. 717, 36 N. W. 155. (2) That there must be apparent cause and good faith on the part of the vendor. *Sills* v. *Hawes* (1899) 14 Colo. App. 157, 59 Pac. 422; *Oppenheimer* v. *Moore* (1905) 107 App. Div. 301, 95 N. Y. Supp. 138; *Truman* v. *Threshing Machine Co.* (1912) 169 Mich. 153, 135 N. W. 89. Here the question of good faith is for the jury. (3) That the vendor deemed himself insecure. *Thorp* v. *Fleming* (1908) 78 Kan. 237, 96 Pac. 470; see *Koster* v. *Seney* (1897) 100 Iowa 558, 69 N. W. 868. Here the question of good faith may not be inquired into, and the vendor may therefore act arbitrarily. The first of these views does not appear to give the vendor all that he contracted for, whereas the third appears to be unnecessarily harsh on the vendee. The second view most nearly approximates what is fairest to the interests of both parties.

SALES—RISK OF LOSS—GOODS "SHIPPED TO ORDER NOTIFY."—The plaintiff sold a quantity of lime to the defendant, f. o. b. a vessel to be supplied by the buyer at the seller's place. The seller shipped the lime "to order notify" defendant, and attaching the bill of lading in the seller's name to a sight draft, sent them through a bank for collection. The goods were lost in transit, and the vendor sued for the price. *Held,* the seller retained title by the bill of lading for his protection until payment of the draft. Risk follows the title and is on the seller. *Penniman* v. *Winder* (N. C. 1920) 103 S. E. 908.

The title in the goods would have passed to the buyer on shipment but for the bill of lading. Sales Act §19, rule 4, subd. 2; *Fragano* v. *Long* (1825) 4 B. & C. 219. Where goods shipped are by the bill of lading deliverable to the seller, or order, the seller thereby reserves the property. But if, except for the form of the bill of lading the property would have passed to the buyer on shipment, under the Sales Act the seller's property is held to be only for the purpose of securing performance, and the risk is on the buyer from the time of delivery to the carrier. Sales Act §20, subd. 2; §22, subd. a. *Alderman Bros.* v. *Westinghouse Air Brake Co.* (1918) 92 Conn. 419, 103 Atl 267; *Kinney* v. *Horowitz* (Md. 1919) 105 Atl. 438. North Carolina has not adopted the Sales Act, but the same result has been reached at common law. *Browne* v. *Hare* (1858) 3 H. & N. *484. A few holdings support the principal case. *William Mercantile Co.* v. *Fussy* (1895) 15 Mont. 511, 39 Pac. 738; *Cragun Bros.* v. *Todd & Kraft* (1906) 131 Iowa 250, 108 N. W. 450. These cases fail to distinguish between the retention of possession (called title by the courts) for the purpose of security only, and the reservation of full ownership. In the former, the risk is on the buyer. Williston, *Sales* (1909) 419, 463. The seller retains a right to possession and a power of disposal; but some of the elements of title, which is an aggregate, not an indivisible mass, are in the buyer. In North Carolina the risk was held to be on the buyer in a conditional sale where the seller retained title for the purpose of securing himself. *Whitlock* v. *Auburn Lumber Co.* (1907) 145 N. C. 568, 58 S. E. 909. It is difficult to see how the court in the principal case can reconcile these two holdings, since the position of the vendor is analogous in both cases.

SALES—TRANSFER OF TITLE—UNDERPAYMENT DUE TO MISTAKE.—The plaintiff sold the defendant fifty bales of cotton for cash, but due to a mutual error in adding the weights of the bales, payment was made by draft for ten thousand pounds less than was actually delivered. On the defendant's refusal to pay the balance of the price on the basis of correct addition of weights, the plaintiff brought trover for the ten thousand pounds. The court *held,* title passed to the defendant on the delivery of the cotton, suggesting that contract was the proper action. *King* v. *Adams* (C. C. A. 8th Cir. 1920) 265 Fed. 9.

Ordinarily in a cash sale, title does not pass until payment. However, an un-